

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MARLAYNA G. TILLMAN, : CIVIL ACTION
Plaintiff, :

vs. :

THE PEPSI BOTTLING GROUP, :
INC., and TEAMSTERS LOCAL: **ORIGINAL**
UNION 830 :
Defendants. : No. 04-1314

Wilmington, Delaware
Tuesday, December 13, 2005

Deposition of MARLAYNA G. TILLMAN,
taken pursuant to notice, at the law offices of
Ballard Spahr Andrews & Ingersoll, LLP, 919 Market
Street, 12th Floor, Wilmington, Delaware, on the above
date, beginning at 10:25 a.m., before Donna A.
Bittner, RMR-CRR.

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20 Teamsters Local Union 830

21 ALSO PRESENT:

22 SARA ALTMAN
23 Human Resources Representative
24 The Pepsi Bottling Group, Inc.

- - -

Marlayna G. Tillman

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1 A. Well, after R & S Strauss there would have
2 been -- I have this written down, too.

3 Q. Actually I want to ask you to tell me from
4 your memory.

5 A. From my memory it would be J.B. Hunt, New
6 York Blood Services, RJM Vending and I think that's
7 all I recall from my memory.

8 Q. Since May of 2001?

9 A. Yeah.

10 Q. When did you work for J.B. Hunt?

11 A. November of 2004 until I believe February
12 2005.

13 Q. New York Blood Services?

14 A. August 2005. No, let me back that up. July
15 2005 through August 2005.

16 Q. Did you work between February 2005 and July
17 of 2005?

18 A. Yes.

19 Q. Where did you go?

20 A. There we go, Cardinal Logistics as a driver.

21 Q. And what were your dates of employment there?

22 A. That was from February to July of 2005.

23 Q. Have you been working since July of 2005?

24 A. Yes.

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1 Q. Where have you been working?

2 A. Coca-Cola, Bronx, New York.

3 Q. And are you currently employed there?

4 A. Yes.

5 Q. When did you work at RJM Vending?

6 A. I think it was in March of -- actually I
7 don't recall. There is no point in me trying to
8 recall that. I don't know.

9 Q. Did you work for a company called Cott
10 Beverage?

11 A. Yes.

12 Q. When did you work for Cott?

13 A. It was in June, June 2004, for a period of
14 three days.

15 Q. Okay. I want to start with RJM Vending.
16 Tell me what position you held for them.

17 A. Um, basically it was like a full service
18 vending worker more or less to refill their
19 machines. He had vending machines.

20 Q. What position did you apply for?

21 A. Full service I guess you would call it
22 technician, whatever.

23 Q. Is that what the position was called?

24 A. I think so.

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1 Q. What were your job duties?

2 A. Basically just to restock the vending
3 machines.

4 Q. And were you driving a company vehicle?

5 A. Yeah -- yes.

6 Q. Were you operating any other kind of company
7 machinery?

8 A. No.

9 Q. How long did you work there?

10 A. Approximately a week.

11 Q. Who was your supervisor?

12 A. You know what, I don't recall his last name.
13 I believe his first name was Robert. The letters in
14 the business name are his initials. I think it's
15 Robert J. something. I don't know his last name.

16 Q. What was the reason you left?

17 A. More or less I was still having problems with
18 my leg injury and it was kind of difficult for me to
19 get around. My leg would like swell up if I was
20 standing on my feet for too long.

21 Q. What was your salary?

22 A. I don't recall.

23 Q. Did you get paid?

24 A. Yes, I did. I know it was significantly less

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1 Q. How long was it after your injury that you
2 started to receive short-term disability?

3 A. It was quite a while, maybe like 10 or 12
4 weeks after.

5 Q. When were you injured?

6 A. November 6th, '03.

7 Q. So that would put it some time in January;
8 correct?

9 A. Possibly. That's maybe like 10 weeks.
10 Again, I don't recall the exact dates, so --

11 Q. I'm not asking you exactly. You said you
12 thought it was between 10 and 12 weeks. Do you
13 still think that?

14 A. I think so.

15 Q. Did you complete an application for RJM
16 Vending on March 16th of 2004?

17 A. I really don't know.

18 Q. Okay.

19 A. I'm not sure.

20 Q. Would it jog your recollection if I showed
21 you the application and it's dated March 16th, 2004?

22 A. Sure.

23 MS. CLEMONS: Would you mark that?

24 (Exhibit Tillman-8 was marked for

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1 receiving short-term disability?

2 A. Um, after.

3 Q. So tell me how it is that you came to apply,
4 to work with them.

5 A. Because I was instructed by my counsel at the
6 time to mitigate my losses and to make up the
7 difference between what I normally was paid at Pepsi
8 and what I was receiving currently, and again
9 because I also asked for light duty status at Pepsi
10 and I was denied that, I was also advised by my
11 attorney, my counsel, to seek other employment.

12 Q. Were you given light duty status at RJM?

13 A. I don't think they called it light duty
14 status. It was a regular position.

15 Q. Is that a no? Did you apply for a light duty
16 job at RJM is the question?

17 A. No.

18 Q. Next I want to talk about Cott Beverage.

19 What dates were you employed by Cott
20 Beverage?

21 A. I'm not sure of the exact date, but it was in
22 June of 2004.

23 Q. And what were your job duties there?

24 A. I was a switcher.

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1 Q. And what does that mean?

2 A. Basically my job was to jockey the trailers
3 from the yard to the dock.

4 Q. And what functions were you performing at
5 Pepsi at that time?

6 A. I was performing no function at Pepsi at that
7 time.

8 Q. You were employed by Pepsi; correct?

9 A. Right.

10 Q. You worked at Pepsi at some point in June of
11 2004; right?

12 A. Yes.

13 Q. Okay. Were you not a transport jockey at
14 Pepsi during that time?

15 A. Um, I was a floater. I was in different
16 positions almost all the time.

17 Q. And one of the positions you filled was a
18 transport jockey; correct?

19 A. Yes, a yard jockey.

20 Q. Was that position similar to the position
21 that you applied for at Cott Beverage?

22 A. Yes.

23 Q. What was your pay there?

24 A. Where?

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1 Q. At Cott Beverage.

2 A. I actually don't recall. I think it was --
3 it might have been 13 something.

4 Q. Who was your supervisor?

5 A. I don't recall his name. I wasn't there long
6 enough.

7 Q. What was the reason you left employment with
8 Cott Beverage?

9 A. Actually they terminated me.

10 Q. Why did they terminate you?

11 A. Because I had missed a day during the -- my
12 probationary period.

13 Q. Tell me how it is that you came to apply for
14 a position with Cott Beverage.

15 A. If my recollection serves me, I was injured
16 or reinjured or reaggravated my injury to my leg. I
17 asked for accommodation at work. I was denied the
18 accommodation and I was told by my supervisor at the
19 time, which was Joe Rizzo, that I had to go out on
20 short-term disability again, so they basically
21 forced me out of work.

22 Q. That's how you came to apply to work at Cott
23 Beverage?

24 A. As far as I remember.

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1 Q. When did this reaggravation of your injury
2 happen?

3 A. Some time in June.

4 Q. You went back to apply at Cott Beverage a
5 month before that; isn't that correct?

6 A. I don't know. I don't recall.

7 Q. Okay.

8 So tell me, did you apply before you
9 said you were forced out or was it after you say you
10 were forced out?

11 A. As far as I know -- actually I don't recall.

12 Q. Okay.

13 A. I don't recall.

14 Q. Is it fair to say that if you applied before
15 your alleged reaggravation you couldn't have applied
16 because you reaggravated your injury?

17 A. Rephrase that, please.

18 Q. You just said, and I can have the court
19 reporter read it back if you like, the reason that
20 you applied for employment at Cott Beverage is that
21 you were forced out of your current, of your
22 position at Pepsi Bottling Group.

23 A. Um-hum.

24 Q. Is that what you said?

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1 A. I think so.

2 Q. Okay.

3 And my question to you is, is that if
4 you in fact applied before this alleged date that
5 you claim you were forced out, one, the forcing out
6 could not have precipitated the actual application;
7 is that correct?

8 A. I'm not -- I'm not really understanding what
9 you're asking.

10 Q. If you applied in May --

11 A. Right.

12 Q. -- and you didn't get forced out according to
13 you until June, you couldn't have applied because
14 you were forced out; correct?

15 A. I could not have applied because I was forced
16 out, no.

17 Q. That's correct or it's not correct?

18 A. Again, I'm not sure what you're driving at,
19 but --

20 Q. I think you know exactly what I'm driving at
21 and I'd like an answer to my question.

22 A. I don't think I know and you might have to
23 clarify a little bit more.

24 Q. Okay. Here is my question.

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1 If the application happened in May;
2 correct?

3 A. That's the part we're not clear on.

4 Q. I'm asking you. Assume it for the purpose of
5 this question, it happened in May. Okay?

6 A. Okay.

7 Q. You said you reinjured yourself in June;
8 correct?

9 A. Um-hum.

10 Q. And you said earlier that the reason that you
11 were applying for application or filled out an
12 application at Cott Beverage is because you
13 reaggravated your injury in June; right?

14 A. Um-hum.

15 Q. That's what you said. So if you in fact
16 applied in May the reinjury could not have caused
17 the application; correct?

18 A. Correct.

19 Q. So why is it that you applied to work at Cott
20 Beverage?

21 A. Because I was looking for a job.

22 Q. So then why did you just tell me it was
23 because you reaggravated your injury?

24 A. That's why I took the job at Cott.

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1 Q. Okay.

2 A. Because I was denied the opportunity to have
3 light duty and I was not accommodated by Pepsi.
4 Pepsi said that you cannot be here with your injury.

5 Q. Pepsi said to you what?

6 A. That I could not be in my position with my
7 injury, with my reaggravated injury.

8 Q. And weren't you told to apply for short-term
9 disability?

10 A. Yes. They said that was something I had to
11 do.

12 Q. Did you do that?

13 A. No, because I was not claiming disability.

14 Q. What do you mean you weren't claiming
15 disability?

16 A. I wasn't disabled. I was injured and I asked
17 to be accommodated by a chair or be able to use my
18 bumping rights to move someone else in another
19 position so that I could do another position,
20 fulfill another job position that would be more,
21 what's the word I want, I guess more, which would
22 help me not reaggravate the injury, for lack of a
23 better term.

24 Q. And what happened?

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1 A. Yes.

2 Q. Do you recognize it?

3 A. Yes.

4 Q. What is it?

5 A. A job application.

6 Q. Is it completed by you?

7 A. Yes.

8 Q. Is that your handwriting?

9 A. Yes.

10 Q. Do you see the date there at the top of the
11 application?

12 A. Yes.

13 Q. Is that May 1st, 2004?

14 A. Yes.

15 Q. Did you complete this application on that
16 date?

17 A. Yes.

18 Q. Okay.

19 Would you take a look where it says
20 "Position desired"?

21 A. Yes.

22 Q. And "Date available." What does it say the
23 date available is?

24 A. 5/20.

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1 Q. You were available to begin working at Cott
2 Beverage on 5/20/2004?

3 A. I assume so.

4 Q. And why was that? That was again before you
5 reaggravated your injury; correct?

6 A. Um-hum.

7 Q. Explain that to me.

8 A. Nothing to be explained. I applied for
9 another job and told them that was my available
10 date.

11 Q. So you were seeking to leave Pepsi in May of
12 2004?

13 A. Not necessarily.

14 Q. What do you mean "not necessarily"?

15 A. I could have been seeking to supplement my
16 income.

17 Q. I'm not asking what you could have, I'm
18 asking what you did. There is a --

19 A. And I said that's not what.

20 Q. Well, that's why I'm asking you the questions.
21 Tell me why you said you were available on the 20th.
22 If you're telling me it's because you wanted to
23 supplement your income, say that, but don't say it
24 could be.

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1 beginning of this job?

2 A. I'm pretty sure I did.

3 Q. Was that before or after you were offered the
4 position?

5 A. I don't recall.

6 Q. When you went in on the day you had the
7 interview, did you sign any papers?

8 A. I don't recall.

9 Q. Do you recall signing any papers?

10 A. The application I signed.

11 Q. Tell me about J.B. Hunt.

12 A. What do you need to know?

13 Q. You told me the dates of your employment.
14 What were your job duties?

15 A. More or less to move freight from one
16 location to another.

17 Q. So you were a driver?

18 A. Yes.

19 Q. Does this position require a CDL?

20 A. Yes.

21 Q. And you said you were working out of New
22 York?

23 A. No, New Brunswick, New Jersey.

24 Q. New Brunswick. When did you apply for this

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1 test and a road test, and if you passed that, then
2 they employ you.

3 Q. Weren't you employed by Pepsi in November of
4 2004?

5 A. Yes.

6 Q. So how is it that you were holding two jobs
7 at the same time?

8 A. As far as what? I don't understand.

9 Q. Let me back up.

10 Was the J.B. Hunt job a full-time job?

11 A. Yes.

12 Q. And what were the hours there?

13 A. They changed also.

14 Q. What position were you holding at Pepsi at
15 that time?

16 A. The same position in transport.

17 Q. So the job you had at Pepsi and the job you
18 had at J.B. Hunt were basically the same job?

19 A. Yeah, you could say that.

20 Q. And the job at Pepsi was a full-time job as
21 well?

22 A. Um-hum.

23 Q. Okay. So how were you able to coordinate
24 those two schedules?

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1 A. Because I wasn't at Pepsi in November.

2 Q. You resigned?

3 A. No.

4 Q. How is it that you were not at Pepsi in
5 November?

6 A. I had a doctor's note releasing me from duty
7 with Pepsi.

8 Q. What was the basis for that doctor's note?

9 A. Stress leave, stress-related leave.

10 Q. Stress-related leave from working at Pepsi
11 but not working anywhere else?

12 A. Correct.

13 Q. When you started working at J.B. Hunt how
14 long had you had your CDL license?

15 A. Um, I guess maybe like two months.

16 Q. Did you tell J.B. Hunt you had your license
17 28 months?

18 A. 28 months? No, I don't recall that.

19 Q. Okay.

20 What is a straight truck?

21 A. A straight truck is a truck that's not a
22 tractor-trailer meaning there is no -- there is no
23 cab and then a trailer that is linked to it. A
24 straight truck is just a cab that has the full body

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1 Q. Did you receive unemployment since December
2 of 2004?

3 A. Unemployment, no.

4 Q. Have you ever received unemployment, well,
5 let's just say in the last five years?

6 A. Yes.

7 Q. When?

8 A. I believe when I was laid off from Pepsi. I
9 think it was for approximately four weeks, I think I
10 received unemployment from the Department of Labor.
11 I don't know the exact dates.

12 Q. Were you eventually paid those four weeks
13 through a grievance proceeding by Pepsi?

14 A. Yes, I was.

15 Q. Did you pay back the unemployment you
16 received from the Department of Labor?

17 A. No.

18 Q. So you kept both the unemployment and the pay
19 for the same period of time?

20 A. As far as I know.

21 MS. CLEMONS: It's 12 o'clock. Do you
22 want to take a break now or do you want to go on?

23 MS. BREWINGTON: Do you need a break?

24 THE WITNESS: No.

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1 stress-related issues due to the job.

2 Q. Okay. When did you consult her?

3 A. I don't recall the exact date.

4 Q. But it's been some time within the last year?

5 A. It was last year, I believe. Oh, wait.

6 We're still in 2005. Earlier this year. You know
7 what, I don't even want to say that because I don't
8 know. I don't know.

9 Q. Where is Dr. Farside and Dr. Obeidy's office?
10 Where are their offices located?

11 A. In I want to say Concord Common on Silverside
12 Road at Route 202.

13 Q. So they're here in Delaware?

14 A. Yes.

15 Q. So you consulted them after you moved to
16 Brooklyn?

17 A. No, I believe it was before I moved to
18 Brooklyn.

19 Q. And you moved to Brooklyn in November of '04;
20 correct?

21 A. Yes.

22 Q. So this is pre, this is before December of
23 '04?

24 A. Yeah, I believe so. I don't know the date.

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1 Q. That's fine. Go ahead. We can take a break.
2 You can talk to her.

3 (Recess; 12:27 p.m.)

4 - - -

5 (Resumed; 12:29 p.m.)

6 BY MS. CLEMONS:

7 Q. Miss Tillman, are you seeking any
8 out-of-pocket expenses that you have experienced as
9 a result of this litigation?

10 A. I don't know how to answer that.

11 MS. CLEMONS: Let's just have lunch.

12 (At 12:30 p.m. a luncheon recess was
13 taken.)

14 - - -

15 (The deposition resumed at 1:20 p.m.)

16 BY MS. CLEMONS:

17 Q. We're back from lunch, Miss Tillman. I
18 want you to understand you're still under oath and
19 my instructions that I gave you this morning still
20 apply to the continuation of the deposition.

21 Do you understand that?

22 A. Yes.

23 Q. Okay.

24 Miss Tillman, were you ever injured

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1 while you were working at Pepsi?

2 A. Yes.

3 Q. Please tell me about that.

4 A. I was in one of the Pepsi trucks and upon
5 exiting the vehicle I I guess twisted a tendon in my
6 calf and it tore in a couple places.

7 Q. Okay. Did you miss any work as a result of
8 that?

9 A. Yes.

10 Q. How long were you out of work?

11 A. From November '03 to April '04, I believe. I
12 don't know the exact date.

13 Q. Did you file a worker's compensation claim in
14 relation to that injury?

15 A. Yes. I initially did, I believe, and it was
16 denied and from that point I had to file a
17 short-term disability claim.

18 Q. Did you file a short-term disability claim
19 related to that injury?

20 A. Yes.

21 Q. Did you receive money for short-term
22 disability while you were on that claim?

23 A. Eventually, yes.

24 Q. Did you receive worker's compensation for

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1 Q. Did you file a workers' compensation claim
2 for that injury?

3 A. No.

4 Q. Any other injuries?

5 A. Not that I can recall. You know what, now
6 that I'm thinking about it, this probably needs to
7 be on the record, when you are injured at work, at
8 Pepsi, you're required to call 1-800 Job Hurt, which
9 is a number that Pepsi gives for their employees to
10 call.

11 That can be what generates a claim and
12 probably that is because I physically don't recall
13 making any claim, but I do recall after having an
14 injury having to call 1-800 Job Hurt for any type of
15 injury sustained on the job. Now, that may be where
16 it originated from, but again because I'm not
17 familiar with the process I wouldn't know.

18 Q. But you don't recall filling out a workers'
19 compensation claim?

20 A. I don't recall.

21 Q. Okay.

22 When did you start working at Pepsi?

23 A. May of 2001.

24 Q. What position were you hired into?

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1 A. Merchandiser position.

2 Q. How long were you in that position?

3 A. Until I think July 2002.

4 Q. What was the next position you assumed?

5 A. Warehouse position.

6 Q. How long were you in that position?

7 A. I guess in some form until November of 2004.

8 I mean, I'm sorry, September 2004, correction.

9 Q. What position did you apply for in September
10 of 2004?

11 A. A driver position, a transport driver
12 position.

13 MS. CLEMONS: I'm sorry, I missed
14 that, if you could just go back. We had the
15 merchandiser from May '01 through?

16 THE WITNESS: July 2002.

17 MR. GELMAN: What was the one after
18 that?

19 MS. CLEMONS: Warehouse person.

20 MR. GELMAN: And what were the dates?

21 THE WITNESS: July 2002 to I guess
22 September 2004.

23 MR. GELMAN: Okay, fine. My
24 apologies.

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1 BY MS. CLEMONS:

2 Q. And what were your duties as a merchandiser?

3 A. To visit different locations, stores, retail
4 outlets, to make sure that the Pepsi product was on
5 the shelves, make sure that they have, you know,
6 sufficient quantities in their back stock.

7 Q. Anything else?

8 A. As far as merchandising, no.

9 Q. What about warehouse?

10 A. Warehouse was basically building pallets of
11 product. I was kind of like a floater. I did
12 several different things in the warehouse including
13 production work.

14 Q. What does that mean?

15 A. Basically, um, I guess where they actually
16 manufacture the soda, working on the bottle and can
17 lines, what else, operated a forklift, I loaded
18 trucks, loaded route trucks, loaded bulk trucks,
19 built bulk load, just about every facet of the trade
20 in the warehouse. But I would also like to back up
21 for a minute to my merchandising position.

22 Q. Miss Tillman, there is no question pending
23 about the merchandising position. I will get back
24 to it and I will let you answer, but right now I

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1 did deliveries.

2 A. I did deliveries with the other Pepsi workers
3 in the conventional department. I did what was
4 called cooler resets at different --

5 Q. Is that the same thing as you're saying did
6 deliveries or is that a different --

7 A. No, they're independent.

8 Q. Tell me what you mean when you say you did
9 deliveries. Tell me what you would do.

10 A. Deliveries means I would ride with another
11 Pepsi employee to a location, say Saturn, Saturn,
12 the car manufacturing plant, and we would open up
13 the bays of the truck and pull off product and take
14 it into their location for use in their vending
15 machines, their cafeteria, wherever, you know, they
16 required it, the product to be at. That's one thing
17 that I did.

18 Q. Okay.

19 A. I did cooler resets, which means you travel
20 to different stores, 7-Eleven, Wawa, mom and pop
21 stores. You go into their cooler where our product
22 is kept and you pull everything out and reset the
23 shelves and put everything back in in a orderly
24 fashion based on what our core requirements were at

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1 that time.

2 Q. Okay.

3 A. I did vending machine, full-service vending
4 machine refills, going to the different locations,
5 MBNA, going to the cafeteria, opening up the
6 machines, refill them with soda as part of my
7 conventional duties. What else did I do?

8 Q. Is that not the same thing as one of the
9 primary job duties as set forth?

10 A. No, that's a little different.

11 Q. Merchandising a store?

12 A. Merchandising basically was supermarket work.
13 You go into a Pathmark or, you know, Shop Rite,
14 Super G, and you go to the back stock room and you
15 put all your soda on a cart and you roll it out to
16 the shelves and stock the shelves.

17 Q. That's what a merchandiser's basic primary
18 function was. Like I said, I did that and then
19 some, which was what I just outlined before.

20 Q. So you told me about doing deliveries, doing
21 cooler resets and then full service vending
22 machines.

23 Anything else?

24 A. I'm sure there were other things. Like I

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1 to do which required me to drive the Pepsi van.

2 Q. So every other day then?

3 A. If you want to call it that. It was frequent
4 enough.

5 Q. I don't want to call it anything. I want you
6 to tell me how often you were out on the truck.

7 A. I can't quote you specific exact times, just
8 like I haven't been able to quote you anything
9 specific. You're asking me to remember stuff from
10 three years ago.

11 Q. You filed a lawsuit about these issues and I
12 have to ask you about them and so you have to tell
13 me, to the best of your recollection, what you
14 remember.

15 A. That's my recollection.

16 Q. So now you're saying it's not every day?

17 A. I said I will be liberal and say --

18 Q. Probably half the time?

19 A. Half and half if I wasn't out on a trip. I
20 might have been out on a trip Monday, Wednesday and
21 Friday and doing research on Tuesday and Thursday,
22 or it might have flipped and I was doing resets on
23 Monday, Wednesday and Friday.

24 Q. Anybody else you went out on a truck with

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1 Q. It's the Charge of Discrimination.

2 Q. Do you have that now?

3 A. Yes.

4 Q. Starting at the beginning of the document it
5 says, "I am a black female individual who has been
6 employed by respondent since May 8th, '01." Then it
7 says, "Since or about October 1, '01 and continuing
8 to present, the respondent has denied me various
9 promotional opportunities, particularly for driver
10 positions."

11 Please describe to me every promotional
12 opportunity that you contend you were denied while
13 working at Pepsi.

14 A. There were several different driver
15 positions. Delivery driver position was posted.

16 Q. Tell me when they were posted and what the
17 positions were.

18 A. I don't know the exact dates of when they
19 were posted.

20 Q. Give me an approximation or something. You
21 filed a claim saying you were denied a promotion.
22 We have to be able to defend that claim, therefore
23 we have to know what you're claiming you were
24 denied, so you have to tell me what it is that this

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1 claim is based on.

2 A. Again, there were driver positions that were
3 posted that --

4 Q. Which year? Around what time? What position
5 were you in? You have to give me something more
6 than positions that were posted.

7 A. Okay. Driver positions in 2001, 2002, 2003
8 and actually 2004. Eventually we got to the part
9 where I did get the position.

10 Q. Are these transport driver positions?

11 A. No. There were some that were delivery
12 driver positions, also transport. There were other
13 postings that I applied for during all those years.

14 Q. I'm not talking about, I want to talk about
15 the driver positions one at a time. Let's do it one
16 at a time.

17 You said delivery driver position?

18 A. Um-hum.

19 Q. When did you apply for that position?

20 A. Again, I have that information, but I don't
21 have it at hand.

22 MS. BREWINGTON: Can I interject?

23 MS. CLEMONS: Yes.

24 THE WITNESS: Do you want me to make it

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1 up?

2 MS. BREWINGTON: No. Would reviewing
3 the Complaint help refresh your recollection?

4 THE WITNESS: No, because it's not
5 listed in there. It's not listed. But again, like
6 I said, there were positions posted in 2001, '2,
7 2002, 2003.

8 BY MS. CLEMONS:

9 Q. Are you telling me you applied for every
10 delivery driver position that was posted in those
11 years?

12 A. There were probably only two and I did apply
13 for them. There was a full service vending position
14 that was posted.

15 Q. I want to take it position by position. I
16 need you to do it the way --

17 A. That requires driving.

18 Q. Is it considered a delivery? You said a
19 delivery driver position. Is that the title of the
20 position or is that just --

21 A. Yes. That's the title of one of the driving
22 positions, yes.

23 Q. You say you think you applied for that job
24 twice?

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1 A. Yes.

2 Q. You don't remember which of the four years we
3 just went through that you applied for those
4 positions?

5 A. I think one was in 2001 and one was in 2002.

6 Q. Okay. How did you apply for the position?

7 A. With a bid form.

8 Q. In 2001 you applied with a bid form?

9 A. I believe so.

10 Q. Were you a member of the union in 2001?

11 A. I should have been, but no, I wasn't.

12 Q. My question was, were you a member of the
13 union in 2001?

14 A. And my answer was I should have been, but I
15 was not.

16 Q. Were you a dues paying member of the union?

17 A. No, because I was not allowed to become one.

18 Q. Did you pay any dues?

19 A. No, because I wasn't allowed to become a
20 member of the union.

21 Q. So you submitted a bid form in '01?

22 A. Yes.

23 Q. In what other year?

24 A. I believe 2002.

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1 Q. Any other position other than the delivery
2 driver that you applied for that you claim you were
3 denied a promotional opportunity?

4 A. Full service vending driver.

5 Q. When did you apply for that job?

6 A. I believe that was in 2002.

7 Q. And how did you apply for that job?

8 A. Bid form.

9 Q. By the way, who was awarded the delivery
10 driver positions?

11 A. I don't know off the top of my head.

12 Q. Were they people already within the union?

13 A. I'm not sure. It might have been. I'm not
14 sure.

15 Q. To your knowledge are jobs awarded based on
16 seniority in union positions?

17 A. I believe so.

18 Q. Any other jobs you applied for that you claim
19 you were denied promotional opportunity?

20 A. I applied for, I'm not sure of the title, the
21 exact title, but I believe it was jockey.

22 Q. In what year did you apply for that job?

23 A. I think that was also 2002.

24 Q. And how did you apply for that job?

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1 A. Bid form.

2 Q. Who was awarded that position?

3 A. Gary DiProsperos.

4 Q. Was he a member of the union?

5 A. I believe so, yes.

6 Q. Did he have more seniority than you?

7 A. I don't know the answer to that only because
8 Gary was a transfer from a different Pepsi plant, so
9 I don't know what his status was or how many years.

10 Q. Was he working at the plant when you began
11 working in the warehouse?

12 A. I don't know if he came before or after me.
13 I don't know.

14 Q. Any other positions?

15 A. I applied for loader. I'm trying to think.
16 Loader, I think that was it.

17 Q. How many times did you apply for the loader
18 position?

19 A. Um, I think that was posted twice actually.
20 That was a couple of times.

21 Q. And in which years?

22 A. I believe it was 2003. I think both of them
23 were in 2003.

24 Q. Who were awarded the positions?

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1 A. I think -- you know, I can't be sure, but I
2 think it was Chris Eastlack and Leroy Lewis.

3 Q. Did Mr. Eastlack and Mr. Lewis have more
4 seniority than you did?

5 A. Yes.

6 Q. Who was awarded the full service vending
7 position? Did I ask you that?

8 A. I think they brought somebody in from another
9 plant. I think they brought in Mike Shimmel from
10 the West Chester location. Actually I'm not a
11 hundred percent sure.

12 Q. Was he a member of 830?

13 A. I believe so.

14 Q. Do you know if he had more seniority than you
15 did?

16 A. I'm pretty sure he did.

17 Q. Any other positions?

18 A. Not that I can recollect right now.

19 Q. You've told me about the delivery driver
20 which you said you applied for twice, the full
21 service vending driver, the jockey and the loader
22 which you applied for twice.

23 Anything else you can recall?

24 A. Well, transport. I applied for a transport

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1 have been hired before got the job?

2 A. No, I didn't say that.

3 Q. Okay. So then what are you telling me?

4 Because I'm asking you about these jobs and if you
5 filed a grievance in relation to your application
6 with any of these positions.

7 A. I'll have to research my grievances.

8 Q. I'm asking you.

9 A. I'll have to research it. I don't want to
10 quote something and not be clear on it.

11 Q. Are you saying you don't recall if you did,
12 you don't know if you did? Yes or no. I mean,
13 either you did or you didn't or you don't remember.

14 A. Relax. Try decaf.

15 I will review my records and I'll let
16 you know. Right now I don't recall.

17 Q. Starting with the delivery driver position,
18 tell me what facts you have personal knowledge of
19 that would lead you to believe you were denied that
20 job based on your race or your sex.

21 A. Basically just the fact that I was the only
22 female in that department and that I applied and I
23 had experience based on my work in the conventional
24 department and based on the fact that it was always

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1 awarded to somebody else other than myself.

2 Q. Anything else?

3 A. No.

4 Q. How about for the full service vending
5 position, what facts are you aware of that support
6 your contention that you did not receive that
7 position based on your race or sex?

8 A. The same answer.

9 Q. Because you were the only female in the
10 department, because you had experience and it was
11 awarded to someone else?

12 A. Yes.

13 Q. The same question, jockey position.

14 A. Pretty much the same answer.

15 Q. The loader position?

16 A. The same answer.

17 Q. An transport driver position?

18 A. Same answer.

19 Q. Are you aware of anyone else who would have
20 any knowledge of facts that would support your
21 contention that you were denied promotional
22 opportunities based on your race or sex?

23 A. I would have to say Peyton Spencer was a
24 person that offered some information regarding --

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1 MS. BREWINGTON: Okay. The question
2 has been asked and answered.

3 MS. CLEMONS: You've got to be kidding
4 me.

5 THE WITNESS: You've got to be kidding
6 me, too.

7 BY MS. CLEMONS:

8 Q. Have you now told me all the facts and every
9 person you know who may possess facts that support
10 your claim that you were denied promotional
11 opportunities based on your race or sex?

12 A. As far as I know, yes.

13 Q. A little further down in your charge you say,
14 "My supervisors, Glen Matthews and Tom Riley, hold
15 me to a higher standard than my white male
16 co-workers with regard to rules and regulations."

17 A. Uh-huh.

18 Q. Tell me the basis for your allegation that
19 you were held to higher standards than your white
20 male co-workers.

21 A. Because if you look at me --

22 Q. Miss Tillman, I want you to testify from your
23 memory. Okay? Tell me what you remember.

24 A. I remember being verbally reprimanded, called

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1 into the office for a procedure called walking the
2 dog. At the time this happened there were white
3 male co-workers doing the very same thing when I was
4 in the office being reprimanded, which I pointed out
5 to Tom Riley.

6 I was threatened with termination.
7 Nobody else got called up to the office for that,
8 even though you could look down on the floor and see
9 guys walking the dog.

10 Q. Anything else?

11 A. That's holding me to a higher standard, I
12 think.

13 Q. Anything else?

14 A. I was basically reprimanded for not being a
15 team player by Tom and Glen, more or less saying I
16 wasn't coming to the assistance of other employees
17 that needed help, and actually when they brought me
18 into the office to tell me this, they had forms
19 ready to write me up for that so-called infraction.

20 Q. What so-called infraction?

21 A. Not being a team player, not helping the
22 other guys out, walking the dog, whatever they were
23 going to write me up for. They had paperwork
24 sitting right there on the desk because apparently

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1 they had already decided that this was something
2 they were going to write me up for.

3 Q. Anything else, Miss Tillman?

4 A. Anything else you want to know? That's about
5 it.

6 Q. I want to know what the basis of your claim
7 is that you were held to a higher standard than your
8 white male co-workers and you've told me two things.

9 Is there anything else?

10 A. When I requested a transfer I wasn't allowed
11 to have a transfer.

12 Q. Requested transfers to who?

13 A. To Tracey, whereas other employees have, you
14 know, come and gone and been able to go into
15 different positions in different areas when they
16 requested that, so --

17 Q. Anything else?

18 A. No, not off the top of my head.

19 Q. This is the time. This is the deposition.

20 A. I can't think of anything now.

21 Q. And it's our opportunity to ask you questions
22 about your lawsuit. Is there anything else you
23 recall?

24 A. Not right now.

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1 Q. You said you were verbally reprimanded for
2 walking the dog. Tell me about that.

3 A. Basically I was, you know, building my
4 pallets and Tom Riley called me into his office and
5 he said that he observed me walking the dog and that
6 it was a safety hazard and if he ever saw me doing
7 it again he would terminate me right on the spot.

8 Q. Anything else?

9 A. Yeah. I pointed out to him, we were looking
10 out of the window, overhead window, that there were
11 several people down on the floor at that time doing
12 the exact same thing. That's where I learned the
13 technique from, from my co-workers, who did it all
14 the time.

15 Q. Anything else happen in that conversation?

16 A. Yeah. After that Tom called a quick
17 conference because he wanted to explain to everybody
18 now that there was no more walking the dog, but
19 first he had to reprimand me first.

20 Q. He called you into his office. Was there
21 anyone else there?

22 A. No.

23 Q. Did he give you a formal written reprimand
24 for this?

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1 A. No. He was going to, but he did not.

2 Q. How do you know he was going to?

3 A. Because he had paperwork in his office, a
4 write-up, a pending write-up, and once I pointed out
5 to him that other people were doing it, I guess that
6 shot his plan.

7 Q. Miss Tillman, did you see a write-up that was
8 written out with your name on it?

9 A. Yes, I saw a write-up and then he got rid of
10 it.

11 Q. Was there any change in your salary as a
12 result of this verbal, this conversation or incident
13 you just talked about?

14 A. A change in my salary?

15 Q. Yes.

16 A. Not that I know of.

17 Q. Was there a change in your hours?

18 A. My hours always changed.

19 Q. What I'm saying is, you said that he called
20 you in and gave you a verbal and told you not to do
21 this anymore?

22 A. Um-hum.

23 Q. As a result of that were your hours changed?

24 A. I don't know how to answer that because again

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1 my hours, I don't know if it was changed as a direct
2 result of that. My hours changed all the time.

3 Q. Was there a change in your schedule?

4 A. Yeah. My hours changed all the time.

5 Q. As a result of getting this --

6 A. I don't know that.

7 Q. Were you transferred from your position as a
8 result of this incident?

9 A. You have to define transfer because I didn't
10 work in the same department all the time. I could
11 be the next day in production and the next day I
12 could be, you know, back on the floor loading
13 trucks. The next day I could be building pallets.
14 The next day I could be, you know --

15 Q. So that happened all the time is what you're
16 saying?

17 A. Yes. So define transfer.

18 Q. Were you told we're transferring you because
19 of this incident?

20 A. No.

21 Q. Did you lose any seniority as a result of
22 this incident?

23 A. No, I don't think so.

24 Q. Obviously, you weren't fired for this

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1 incident; right?

2 A. No.

3 Q. And you said that Tom called a meeting with
4 the rest of the warehouse?

5 A. Yeah, as an afterthought, yes.

6 Q. And what did he say at that meeting?

7 A. He told all the guys that nobody else was to
8 walk the dog anymore.

9 Q. Hadn't Tom said that in previous meetings
10 that no one should be walking the dog, as it's
11 called?

12 A. Not in my previous meeting I was in.

13 Q. Had you recently arrived at the warehouse?

14 A. Yes.

15 Q. So for all you know he had discussed it at
16 previous meetings?

17 A. I don't know that he did, not at any meeting
18 I was at.

19 Q. But he did tell the others in that meeting
20 that they should not be walking the dog; right?

21 A. Afterwards, after he reprimanded me, yes, he
22 did.

23 Q. Did anyone else hear him reprimanding you?

24 A. No, nobody else. He called me specifically.

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1 He picked me out of the crowd and brought me into
2 the office.

3 Q. Okay.

4 And Tom is black; isn't that right?

5 A. Yep.

6 Q. Anything else about that incident you have
7 not told me?

8 A. Not that I'm aware of.

9 Q. I'm sorry?

10 A. Not that I'm aware of.

11 Q. And you did file a grievance about that
12 incident; isn't that correct?

13 A. Um-hum. No, no. I filed a discrimination
14 complaint.

15 Q. You didn't file a grievance about this issue
16 with Tom Riley?

17 A. Um, no, I don't think I did. I went straight
18 to the Department of Labor with that.

19 Q. The next thing you told me about is you were
20 reprimanded for not being a team player. Tell me
21 about that.

22 A. More or less we were building bulk pallets
23 and, um, when you, you know, finish whatever your
24 allotted amount of builds are, you know, most of the

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1 guys just go home or whatever, and I was told that,
2 you know, I left and didn't help anybody else, which
3 was totally false. It was a falsehood. I helped a
4 couple of people build pallets before I left for the
5 evening, and I explained that to Glen Matthews.

6 Q. Okay. Is that the entire incident?

7 A. As far as that goes, for not being a team
8 player, yeah.

9 Q. Where did this conversation occur?

10 A. In the upstairs warehouse office.

11 Q. So it was just you and Glen Matthews?

12 A. Tom Riley was also there.

13 Q. Did Tom say anything?

14 A. Not when I was talking to Glen, no, because
15 Tom just kind of sat in. He didn't really have
16 anything to say.

17 Q. And what did you say?

18 A. I told Glen more or less that, you know, he
19 had his facts wrong and that I was helping a couple
20 people on the floor before I left for the evening.

21 Q. Did you receive any kind of formal reprimand
22 for this?

23 A. No.

24 Q. Was your salary changed?

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1 A. Not that I know of.

2 Q. Was there any change in your hours that you
3 know of as a result of this reprimand?

4 A. Again, I don't know if it was as a result,
5 but my hours always changed.

6 Q. I'm asking you to your knowledge. Every
7 question is to your knowledge. Was your schedule
8 changed as a result of this incident?

9 A. I don't know that it was or was not.

10 Q. Okay.

11 Were you transferred as a result of
12 this incident?

13 A. Again, we're going over the same issues.

14 Q. This is a different question. I asked you
15 that question about the previous incident and now
16 I'm asking you that question about this incident.

17 A. But transferring, again, I worked in
18 different departments. You could say that I was
19 transferred if they transferred me down to the
20 production room. You could say I was transferred if
21 I was transferred out to do yard work, you know what
22 I mean, so --

23 Q. I'm asking you, to your knowledge were you
24 transferred as a result of this incident?

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1 A. I can't --

2 Q. If you don't know, then the answer is I don't
3 know, but that's my question.

4 A. Well, I don't know.

5 Q. Okay. That's a perfectly acceptable answer.

6 Did you lose any seniority as a result
7 of this incident?

8 A. Not to my knowledge.

9 Q. The last thing you told me about was you said
10 there was a transfer request you made to Tracey.
11 Tell me about that.

12 A. A couple of times. I also made that same
13 request to Scott Steiger.

14 Q. You said Tracey first, so tell me first about
15 when you made the request to Tracey.

16 A. That's when Tracey first came to the
17 Wilmington facility. She knew about some of the
18 problems that I was having with management and I
19 told her I just didn't feel comfortable being the
20 only female at the plant. I felt like I was in a
21 hostile work environment. I felt like I wasn't
22 wanted there and I wasn't wanted there by the
23 supervisors, and I asked her to visit the
24 possibility of me getting a transfer to anywhere,

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1 any other Pepsi, just, you know, I just wanted to go
2 somewhere else where I wouldn't be the only female
3 in the department.

4 Q. And you're saying this was during a
5 conversation with Tracey?

6 A. Yes.

7 Q. And what did Tracey say in response to that?

8 A. That was something that she could look into.

9 Q. You're saying this is when Tracey first
10 arrived?

11 A. Yes. And we had another conversation about
12 it also with Scott Steiger where we had a meeting
13 together.

14 Q. Hold on. Let's finish up the first
15 conversation with Tracey.

16 What did she say? What did she say she
17 would do? What was the result of the conversation?

18 A. There was no result. If you're talking about
19 an action, a course of action, there was none. She
20 said she would look into it and she just never got
21 around to doing anything about it obviously because
22 I'm still there.

23 Q. Did you apply for positions anywhere else?

24 A. No, not -- well, you know what, I looked into

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1 going, the possibility of going to West Chester, and
2 I remember trying to set up something where I could
3 talk to John West, but that never came to fruition
4 either, so --

5 Q. I'm confused by your answer. Did you apply
6 for a position at West Chester?

7 A. No, I didn't formally apply. I was basically
8 just trying to get information on what was available
9 at the West Chester plant.

10 Q. Did you ever meet with him?

11 A. No..

12 Q. So have you told me everything you recall
13 about this first request to Tracey for information
14 about a transfer?

15 A. As far as I know.

16 Q. Did you make any additional requests to
17 Tracey for information about a transfer?

18 A. Not until we had a meeting with Scott
19 Steiger.

20 Q. And when was that?

21 A. I think it was some time in August, August
22 2002. I'm not real clear on that.

23 Q. And what happened at that meeting?

24 A. Basically we were just discussing, you know,

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1 Q. I want you to tell me what the conversation
2 was about transfer, what you said, what they said,
3 and if you don't know verbatim, that's fine, but
4 give me the gist of what the conversation was.

5 A. As far as transfer goes?

6 Q. Yes.

7 A. I talked with Scott. Tracey really didn't
8 have anything to say at that meeting, it was
9 basically Scott.

10 Scott told me that he felt a transfer
11 was not needed, I just needed to resolve whatever
12 issues that I had at the Wilmington plant, and so
13 therefore, you know, a transfer wasn't really a
14 viable solution.

15 Q. Did Scott tell you that you wouldn't be
16 permitted to transfer?

17 A. No, but by the tone and the way he spoke to
18 me in the conversation it seemed like he was
19 alluding to that, you know, there was no chance for
20 me to get a transfer.

21 Q. Did he ever tell you not to apply for
22 positions at other plants?

23 A. No.

24 Q. Did you ever --

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1 A. But I never asked him could I either.

2 Q. Did you ever apply for any other positions
3 outside of the Wilmington plant?

4 A. No. I applied for everything else inside the
5 plant, trying to get out of the warehouse.

6 (Exhibit Tillman-17 was marked for
7 identification.)

8 BY MS. CLEMONS:

9 Q. I'm showing you what's been marked Deposition
10 Exhibit 17.

11 Take a minute and review that.

12 (Pause.)

13 Q. Have you had a chance to read the first
14 paragraph of this document, the paragraph titled
15 one, Miss Tillman?

16 A. Um-hum, yes.

17 Q. Does this refresh your recollection as to a
18 conversation you had with Tracey about moving to a
19 different facility?

20 A. Yeah. That was much later than the first
21 conversation, but yes.

22 Q. So is this a separate conversation from the
23 two you've already told me about?

24 A. Yeah.

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1 your race or sex?

2 A. It was probably based on the claims that I
3 filed. That's where the retaliation comes in.

4 Q. So you --

5 A. I believe I was denied promotions based on my
6 filings with the DDOL.

7 Q. You were denied --

8 A. Promotions.

9 Q. We're talking about transfers right now. Are
10 we talking about -- I want to talk about transfers.
11 If you want to tell me something about promotions,
12 we can go back and talk about promotions, but I
13 asked you to tell me everything that formed your
14 basis about your claim for promotions and you didn't
15 say anything about retaliation. We can go back
16 there, but I'm asking you now about transfers.
17 Okay?

18 Tell me what it is that you believe
19 that --

20 A. I believe that because I filed the charges
21 that my work environment was made increasingly
22 hostile towards me. Anything that I --

23 Q. Conclusions don't help me. I need you to
24 tell me the facts. I'm asking you about facts.

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1 and regulations?

2 A. As far as I know, yes.

3 Q. In this charge you also claim that you were
4 paid lower wages than your white male co-workers for
5 the same work.

6 Please tell me what the basis of your
7 claim is.

8 A. Exactly that. When I came into the
9 department I was making a lower wage than my white
10 male counterparts.

11 Q. Which department? You held three different
12 jobs, so tell me which jobs you're talking about,
13 what salary.

14 A. The warehouse department.

15 Q. Warehouse?

16 A. When I was a union worker. When I was in the
17 conventional department when I was a union worker
18 doing union work, I should say.

19 Q. Okay.

20 A. I still was held at the same rate as a
21 merchandiser.

22 Q. Please tell me, you're talking about two
23 different times then? You're saying when you were a
24 merchandiser and when you were in the warehouse?

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1 A. Um-hum.

2 Q. Let's start with when you were in the
3 warehouse.

4 Tell me what facts you have that
5 support your claim.

6 A. Pay stubs.

7 Q. Tell me what you were paid versus what you
8 say your co-workers were paid. Tell me who they
9 were and what positions they held.

10 A. The Department of Labor did that
11 investigation. They have that information on who
12 was paid what versus mine, my salary.

13 Q. Miss Tillman, you made this allegation. Tell
14 me who it is you contend that you were paid less
15 than.

16 A. The warehouse workers. Pick one.

17 Q. You're saying all warehouse workers?

18 A. Throw a dart at the dartboard. Whose ever
19 name comes up run the payroll records.

20 Q. You contend that you were paid less than all
21 your male counterparts the entire time you worked in
22 the warehouse?

23 A. I didn't say the entire time. You just said
24 that.

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1 Q. Then tell me what you're talking about.

2 A. I just told you what I was talking about.

3 Q. Tell me what period of time you contend while
4 you were working at the warehouse you were paid less
5 than your white male co-workers.

6 A. As soon as I came into the warehouse.

7 Q. Tell me when.

8 A. If that's July 2002. I don't know when my
9 level of pay changed. They have that information.
10 I can dig it up.

11 Q. What is the level of pay you're contending
12 that you were paid and they were paid?

13 A. I was paid I think 12.68 and the warehouse
14 guys were between 15.75 and 16 something, 16.63,
15 whatever.

16 Q. Are you contending you were the only
17 warehouse worker that was paid 12.68?

18 A. At that time, yes.

19 Q. What if I could show you documents that there
20 were two other male employees who were paid exactly
21 the same rate?

22 A. Okay.

23 Q. Would you contend then that it was based on
24 your gender or your race?

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1 A. Yeah.

2 Q. Why?

3 A. Well, because again I was a union employee.
4 Whether, you know, anybody wants to acknowledge it
5 or not, I was doing union work way back when I was
6 in the conventional department, so my rate should
7 have reflected that way back then.

8 Q. I'm asking you about the warehouse
9 department. I want to talk about merchandiser when
10 we get there. I'm talking about the warehouse.

11 A. It doesn't matter.

12 Q. We're talking about the warehouse position.
13 You just said when you came in July of 2002 you were
14 paid 12.68 and that the other members of the union
15 were paid at least 15.75. That's what you said.

16 A. Um-hum.

17 Q. And I said to you what if there is evidence
18 that a black male and a white male were also paid
19 12.68 in July when they came into the warehouse.
20 Would you still contend that it was based on your
21 race or sex?

22 A. Yeah, I think I would.

23 Q. Why?

24 A. Because again we go back to when I felt I

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1 Q. Okay. So beginning in August when you became
2 a member of the union were you paid at the 15.75
3 rate?

4 A. I don't know when it was, but I eventually
5 did get 15.75, yeah.

6 Q. And is that what the union rate says it
7 should be is 15.75?

8 A. Yeah.

9 Q. Are you contending that you were not paid in
10 line with this wage schedule?

11 A. Yes, for some period of time, yes, that is
12 what I'm contending.

13 Q. Why? Tell me about that.

14 A. Because I wasn't paid that rate when I
15 initially came into the warehouse.

16 Q. You were not a member of the union for 30
17 days; isn't that correct?

18 A. I was not a member of the union.

19 Q. Correct. Right? You were not a dues paying
20 member of the union until you were actually brought
21 into the union 30 days later; correct?

22 A. Yeah.

23 Q. And doesn't the contract, we can pull out the
24 language, it provides for a period where you're paid

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1 for 80 percent of the applicable rate? Did you not
2 know that? I mean if you want to go through the
3 contract, we can, but did you know about the
4 training rate of 80 percent?

5 A. No, not in --

6 Q. Let's find it. On Page 29 do you see that
7 where it says Section 2, step rates?

8 A. Yeah.

9 Q. "Newly hired employees should be paid
10 according to the following step rate schedule." Do
11 you see that?

12 A. Um-hum.

13 Q. Where it calls for someone who has been in
14 the union zero to 12 months gets 80 percent, 13 to
15 24 months, 90 percent, and 25 months thereafter 100
16 percent?

17 A. Um-hum. It also says they reserve the right
18 to waive the step rates at any time.

19 Q. And they did that, right, by raising you to
20 that rate within a month of when you got there?

21 A. Yeah, but they probably should have been
22 doing that about a year prior to that.

23 Q. Okay.

24 Are you aware that two other

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1 A. Approximately, give or take.

2 Q. I'm going to show you your earnings
3 statements. Were you compensated for all the
4 mileage that you submitted?

5 A. There were times when it was in question.

6 Q. Tell me about that.

7 A. Well, again when I went to the conventional
8 department I didn't receive the mileage anymore
9 because during the week I was driving the company
10 van, so that mileage was taken away from me, but it
11 was also taken away from me on the weekends, too,
12 because on the weekends I worked as a merchandiser.
13 I was holding down the same two positions.

14 Q. When you say it was taken away from you, you
15 weren't actually driving your car; correct?

16 A. Absolutely not.

17 Q. So wasn't the mileage reimbursement --

18 A. That was --

19 Q. Hold on. Wasn't the mileage reimbursement
20 for you driving your own personal car?

21 A. Right.

22 Q. So when you weren't driving your personal car
23 for work you didn't receive the mileage; correct?

24 A. Yeah. There were sometimes when I did drive

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1 my car, like on the weekends, when I wasn't paid for
2 it, because they assumed that I was still driving
3 the van during the week.

4 Q. So are you telling me you did not receive
5 mileage reimbursement while you were working in the
6 conventional department?

7 A. Right.

8 Q. Okay.

9 (Exhibit Tillman-21 was marked for
10 identification.)

11 BY MS. CLEMONS:

12 Q. Miss Tillman, you now have a collection of
13 earnings statements in front of you. Do these look
14 familiar to you?

15 A. Yes.

16 Q. Now, what were the dates you were in the
17 conventional department?

18 A. October '02 -- I mean October '01 through May
19 '02.

20 Q. So why don't you turn to where these start in
21 October and look through May and tell me every place
22 where you got reimbursed for mileage.

23 Would you just tell me which, when you
24 get there, which period and how much mileage you got

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1 merchandisers were laid off at the time you were
2 transferred to the conventional department?

3 A. I can't comment on that one way or the other.
4 I don't know.

5 Q. Did anybody ever tell you, rather than being
6 laid off, we'll transfer you to the conventional
7 department?

8 A. Nope.

9 Q. Paragraph 15 --

10 A. Because again I was still in the
11 merchandising department. I still had my
12 merchandising duties, so they obviously still needed
13 help in merchandising.

14 Q. My question was, you were in the bulk
15 department; correct? You were on the bulk side
16 working for Bruce; right?

17 A. Bulk merchandising.

18 Q. Right. My question was, did you know any
19 other merchandisers who worked in the bulk who got
20 laid off at the same time?

21 A. No.

22 Q. You said no. Then I said did anyone ever
23 tell you that rather than lay you off they would
24 transfer you to do merchandising duty in the

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1 conventional department rather than lay you off, and
2 you said no.

3 A. No. I wasn't transferred out of the
4 merchandising department. That's my point.

5 Q. I didn't say merchandising department. I
6 said bulk and conventional.

7 A. Bulk is merchandising.

8 Q. Merchandiser position is merchandising. I'm
9 talking about in the merchandising position. The
10 position is called merchandiser; correct?

11 A. Bulk merchandiser.

12 Q. In the department called bulk; correct?

13 A. Um-hum.

14 Q. You were transferred from the bulk department
15 to the conventional department is your contention;
16 correct?

17 A. In addition to being in -- it wasn't instead
18 of. It was in addition to that.

19 Q. So your contention is that you were
20 performing duties in both departments?

21 A. Thank you. Yes.

22 Q. Tell me what your schedule was.

23 A. My schedule varied.

24 Q. Tell me what you remember.

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1 Q. Would you look at Paragraph 18? Read that to
2 yourself.

3 A. Okay.

4 Q. Did you receive overtime pay while you were
5 working in the conventional department?

6 A. Yes.

7 Q. So the statement that you were not receiving
8 any overtime pay is not a correct statement?

9 A. It needs to be adjusted.

10 Q. To what?

11 A. It should say that I wasn't receiving
12 overtime pay at the correct rate.

13 Q. And what is the correct rate?

14 A. Whatever extra man wages were.

15 Q. So you're not contending that you weren't
16 paid time and a half at your rate, you're contending
17 you weren't paid time and a half under the union
18 rate; correct?

19 A. Correct. And also that under the union guys
20 got double time for working on Sunday which I didn't
21 receive at all.

22 Q. Again at this time you were not a member of
23 the union; correct?

24 A. Right.

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1 were agreed to a full and fair release of the
2 grievance having to do with this issue?

3 A. No. That was for something different and I
4 do distinctly remember there being a grievance that
5 was signed off on but not by myself. There was one
6 without my signature at all on it.

7 Q. I'm sure Mr. Gelman will get to the
8 grievances, but you don't recall that one of the
9 grievances you released had to do with this issue?

10 A. Not with this issue. I recall it being
11 something else.

12 Q. Any other times that you talked to Tracey or
13 anyone else in HR about back pay? Am I correct that
14 by back pay you mean being paid the union wage?

15 A. Yes.

16 Q. Did you talk to anyone else in Pepsi HR about
17 that issue?

18 A. It may have been brought up with Scott Steiger.

19 Q. First tell me what did Tracey tell you.

20 A. That I wasn't owed that money.

21 Q. And why did she say that? Did she give you a
22 reason?

23 A. I don't recall a reason actually.

24 Q. Didn't Tracey tell you that you needed to

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1 have a CDL in order to get the position of an extra
2 man or a relief driver and that that's why you
3 weren't able to bid or apply for that job?

4 A. That might have been, yeah, in speaking of
5 applying for a certain job, yes, that she did
6 mention that, but that wasn't what was at issue for
7 me.

8 Q. Okay.

9 A. What was at issue was the fact that I was in
10 the conventional department, which was a union
11 position, performing union-based duties.

12 Q. Tell me what your basis is for believing that
13 every position in the conventional department is
14 unionized.

15 A. That's my knowledge. That's the knowledge I
16 have.

17 Q. Have you ever seen a document that says that
18 every employee of the conventional department is a
19 member of the union?

20 A. No. My recollection is that the positions
21 described, um, within the job description were
22 positions that I performed and those were union
23 positions, union duties.

24 Q. But were there duties on those descriptions

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1 that you did not perform?

2 A. Um, not to my knowledge. As far as I know I
3 did a little bit of everything.

4 Q. Did you take orders from customers?

5 A. No. That's the sales department.

6 Q. I'm asking, did you take orders from customers?

7 A. No.

8 Q. Did you take money from customers for payment
9 for deliveries?

10 A. No.

11 Q. Did you keep a route book?

12 A. No.

13 Q. Did you drive a tractor-trailer alone?

14 A. Not alone.

15 Q. How often did you drive a tractor-trailer
16 with someone else?

17 A. I think we went over it, but it was
18 frequently. I can't count how many times.

19 Q. That you actually drove?

20 A. And they sat in the seat next to me as a
21 passenger, yes.

22 Q. To your knowledge was a CDL Class A license a
23 requirement of the delivery driver position?

24 A. Yes.

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1 receive the training through the company and at the
2 time they weren't making that available to me,
3 although they have made it available to other
4 people.

5 Q. Tell me who it is that you contend received
6 company training in order to get a CDL.

7 A. James Bell, Matt Casey, Charlie Rogers.
8 There are a couple other drivers. Those are three
9 guys that I know of.

10 Q. What training did they receive?

11 A. They were allowed to use the company trucks
12 to go and take their CDL test. In fact, Matt Casey
13 told me that he took it like three or four times
14 because he kept failing and they allowed him to go
15 back and keep retesting until he actually passed the
16 test.

17 Q. Weren't you allowed to take the company truck
18 to go take your CDL?

19 A. Actually I was one time given the truck,
20 however the day that I took the truck, um, I wasn't
21 aware that I had to take a written exam first, so
22 the day that I took the truck, um, I wasn't allowed
23 to use the truck. I had to take the written exam
24 first. Actually I failed that written exam, so

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1 A. Not that I'm aware of.

2 Q. Did she tell you in an e-mail that you could
3 use a truck to take on days off and that you could
4 use a truck to take the test, just to let her know
5 when you wanted to do that?

6 A. Um, no, I don't recall that actually.

7 Q. Okay.

8 How about Rhonda, didn't Rhonda tell you
9 that you could use a truck on your day off to learn
10 how to do it, to practice driving?

11 A. No. I think what they were telling me is
12 that's what other drivers did. They did not tell me
13 that I specifically could do that.

14 Q. Okay.

15 Did you ever do that?

16 A. Um, the only driving I got in was when I was
17 actually out driving with the guys in the
18 conventional department or the -- I kind of learned
19 by doing some of the jockeying in the yard, but that
20 wasn't, you know, a requirement of some of the
21 positions that I was doing, so I kind of learned on
22 the fly, if that's what you mean.

23 Q. And didn't Rhonda tell you that you should
24 bid into a union position so you could build

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1 who did not have a Class A CDL?

2 A. I don't know.

3 Q. So you don't know of anyone?

4 A. I don't know the answer. No, I don't have an
5 answer to that.

6 Q. So if there were other people who were denied
7 the ability to apply for the position who were white
8 men, would you have any basis to dispute that?

9 A. Say that again.

10 Q. Okay.

11 If there are white men who will testify
12 that they were not permitted to apply or bid on this
13 position because they did not have a CDL, would you
14 have any reason to dispute that?

15 MS. BREWINGTON: I'm going to object,
16 calls for speculation, but you can answer.

17 THE WITNESS: I don't even know how to
18 answer that.

19 BY MS. CLEMONS:

20 Q. I'm just saying, do you know of anything that
21 would contradict that?

22 A. I can't answer that.

23 Q. When did you get your CDL license?

24 A. September 2004.

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1 Q. And how long after you got that license were
2 you awarded the bid for a driver position?

3 A. I think it was sometime also in September.

4 Q. Within a few weeks?

5 A. I think so.

6 Q. So why is it that you didn't previously
7 receive your CDL?

8 A. Because there was never an opportunity for me
9 to take the truck out again until then.

10 Q. Are you saying that you were not permitted to
11 use a truck to take your test and that's why you
12 never passed your CDL before September of '04?

13 A. Um, yeah, I'm saying that I was always given
14 like, you know, an excuse as to why, you know, there
15 were no trucks available or whatever.

16 Q. Anybody you know during that time who was
17 allowed to use a truck?

18 A. I don't think anybody else went for a license
19 at that time. I'm not sure.

20 Q. Take a look at Paragraph 42.

21 A. Okay.

22 Q. What company policy are you referring to for
23 hiring within?

24 A. Well, I was always told that they have a

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1 incident came up and all that stuff.

2 Q. Okay.

3 Anything else?

4 A. No.

5 Q. Did you tell Tom Riley and Glen Matthews that
6 you filed a complaint of discrimination?

7 A. No.

8 Q. To your knowledge, were they aware that you
9 filed a complaint of discrimination?

10 A. Probably not until they were served with the
11 document.

12 Q. Are you telling me they were served with the
13 specific complaint, Tom Riley and Glen Matthews?

14 A. Actually I think Rhonda Curry was, but --

15 Q. So I'm asking, to your knowledge, did you
16 ever tell them that you filed a complaint?

17 A. No, I never told them.

18 Q. Did they ever tell you that they knew you
19 filed a complaint?

20 A. No.

21 Q. Did anyone ever tell you that they knew you
22 filed a complaint?

23 A. Did anyone ever tell me that they knew I
24 filed a complaint?

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1 Q. Yes.

2 A. No, not to my knowledge.

3 Q. Okay.

4 Paragraph 52.

5 A. Okay.

6 Q. This is referring to the walking the dog
7 incident and you previously told me all the facts
8 you know about that incident; correct?

9 A. Um-hum. Yes.

10 Q. Okay.

11 At the end of this paragraph it says,
12 "No individual in the department was reprimanded for
13 this activity."

14 Is that a true statement?

15 A. No other individual in the department was
16 reprimanded in the manner that I was for that
17 activity, no.

18 Q. What do you mean by "in the manner that you
19 were"?

20 A. Well, I was pulled aside solo and reprimanded
21 verbally and I was threatened with termination.. If
22 you're talking about the little afterthought
23 conference that Tom had with everybody else, they
24 weren't disciplined in the same manner that I was.

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1 Q. I'm asking, do you have knowledge -- how
2 would you know if he ever pulled another employee
3 aside and told them the same thing?

4 A. He didn't do it that day.

5 Q. So you're talking about that day in reference
6 to this comment?

7 A. Right.

8 Q. So if other employees would testify at
9 different times on different days Tom Riley gave
10 them the same riot act that you say he gave you
11 about walking the dog, would you have any
12 information to dispute that?

13 A. I wouldn't.

14 Q. Paragraph 55. Is it true that you were laid
15 off with no forecast for recall?

16 A. Yes.

17 Q. Paragraph 56.

18 A. Okay.

19 Q. Is that a true statement, that you were the
20 only individual not recalled to work two days later?

21 A. To my knowledge, yes.

22 Q. If there were other employees who were not
23 called back two days later, would you have any
24 information to dispute that? Do you have any

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1 documents or firsthand knowledge?

2 A. No, only what I was told by an employee who
3 was called back.

4 Q. So your knowledge that everybody was called
5 back was based on what somebody else told you?

6 A. One of the affected group, yes.

7 Q. And you filed a grievance about this;
8 correct?

9 A. Yes, I did.

10 Q. And you were paid for the entire four weeks
11 you were laid off, correct, as a result of that
12 grievance?

13 A. Yes.

14 Q. Paragraph 59.

15 A. All right.

16 Q. You said, "Plaintiff's supervisor started
17 creating a disciplinary file on plaintiff."

18 What are you referring to? Did you see
19 a file of some sort?

20 A. They had, I guess it's a file, it's a
21 document that shows you how many occurrences and
22 stuff that you have which prior to that I had never
23 seen anything like that before.

24 Q. Okay.

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1 Isn't it true that there was a new
2 attendance policy put into place around this time?

3 A. I really couldn't tell you.

4 Q. In this paragraph you talk about an
5 eight-minute acceptable window for tardiness.

6 What is that?

7 A. Basically, it just refers to a window of time
8 that employees had to punch in without being, you
9 know, I guess reprimanded for it or without having
10 something put in their file.

11 Q. Where did you learn about this eight-minute
12 window of time?

13 A. Again, that was something that was like
14 common knowledge or custom or whatever.

15 Q. Paragraph 60.

16 A. Okay.

17 Q. Tell me about this incident.

18 A. I came into work. I punched in. I was
19 walking across the floor to my station. My cell
20 phone, which was on my person, rang, and I answered
21 it and the plant manager, who was on the floor at
22 the same time, basically started screaming at me,
23 you know, you're not supposed to have your cell
24 phone, you're not supposed to answer cell phones,

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1 there is no phones supposed to be in the plant, and
2 just basically yelling at me on the floor, and I was
3 actually on the phone and this guy was like
4 screaming in my ear, and there were a couple people
5 that, you know, were there.

6 It was just kind of embarrassing that,
7 you know, he was yelling at me in front of people,
8 so, and he really didn't have to, you know, in my
9 opinion, didn't have to take that position. He
10 could have just, you know, just pulled me to the
11 side or, you know, basically in a calm, cool,
12 collected fashion, you know, tell me, hey, that's,
13 you know, something that we don't do or whatever.

14 Q. Hadn't another supervisor just the day before
15 told you not to use your personal cell phone on the
16 floor?

17 A. I don't recall that.

18 Q. Did this incident result in any change to
19 your salary?

20 A. To my salary, no.

21 Q. Your hours?

22 A. Not as far as I know.

23 Q. Your schedule?

24 A. Well, again we talked about my schedule

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MARLAYNA G. TILLMAN, : CIVIL ACTION
Plaintiff, :
vs. :
THE PEPSI BOTTLING GROUP :
INC., and TEAMSTERS LOCAL :
UNION 830 :
Defendant : NO. 04-1314

Philadelphia, Pennsylvania
Wednesday, October 11, 2006

Continued Deposition of MARLAYNA G.
TILLMAN, taken pursuant to notice, at the law
offices of Ballard Spahr Andrews & Ingersoll, LLP,
919 Market Street, 12th Floor, Philadelphia,
Pennsylvania, on the above date, at approximately
11:00 a.m., before Terry Barbano Burke, RMR-CRR.

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15 - - -

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1 Q. I guess that's perhaps up for dispute.

2 I guess now is as good a time as any,
3 and some of this was covered in your last
4 deposition, and I am going to try my best not to
5 have you repeat anything that you discussed there.
6 It serves no purpose. However, I suppose it would
7 be most helpful for today's deposition if we could
8 go back and try and create a time line.

9 What was the first position you held
10 with Pepsi?

11 A. Merchandiser.

12 Q. What was your date that you became a
13 merchandiser?

14 A. May 8th, '01.

15 Q. What was the next position you held at Pepsi?

16 A. That would be in the conventional department.

17 Q. And when did you attain this position?

18 A. Approximately October of '01. I would say,
19 my best recollection is October 13th of '01.

20 Q. And then at a certain point you left the
21 conventional department?

22 A. Yes.

23 Q. And where did you go after that?

24 A. Actually, I was returned back to the

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1 merchandising department.

2 Q. Do you recall the date?

3 A. I want to say May of 2002.

4 Q. At any point did you then leave the
5 merchandising department?

6 A. Yes. Let me make sure.

7 July, I believe July 2002 I was made a
8 member of the warehouse. So I got a position in
9 the warehouse.

10 Q. Some time thereafter you became a member of
11 the union?

12 A. Yes.

13 Q. When you were in the merchandising
14 department, and I'm not sure if you said
15 merchandising department or merchandiser, is it
16 fair to say your job title was as a merchandiser?

17 A. Yes.

18 Q. And do you contend that a merchandiser is a
19 position that was covered under the collective
20 bargaining agreement between the union and Pepsi?

21 A. The merchandising department is not.

22 Q. So from all of the time you spent in the
23 merchandising department until October of 2001, are
24 you claiming that you had any rights under the

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1 A. Okay.

2 Q. Tell me about this layoff that's referenced
3 in Paragraph 57 and 58.

4 A. Well, as it says in Paragraph 53, basically I
5 filed a charge of discrimination based on treatment
6 I was receiving after I was awarded the position in
7 the warehouse.

8 Q. So for all activities discussed in Paragraphs
9 53 through 58, were you a warehouse employee?

10 A. Yes.

11 Q. Were you a bargaining unit member?

12 A. I believe I was, yes.

13 Q. I'm sorry I interrupted you. You were
14 explaining what you meant by 58?

15 A. Yes. After I filed my discrimination charge,
16 I got laid off shortly thereafter. I believed it
17 to be in retaliation for filing the charge of
18 discrimination. I base that on the fact that I was
19 not recalled in the same time frame as the other
20 people who were laid off. The three gentlemen that
21 were named as being in the warehouse before me also
22 were laid off. I guess due to business necessity
23 or whatever. But they all got recalled, and I did
24 not.